

Court of Conciliation and Arbitration within the OSCE

Conflict resolution within the OSCE – Opportunities of the
OSCE Court of Conciliation and Arbitration

ENGLISH
Original: FRENCH

1 June 2021

KEYNOTE ADDRESS

Emmanuel DECAUX, President of the Court of Conciliation and Arbitration within the OSCE

Madam Ambassador, Excellencies, Ladies and Gentlemen, dear colleagues,

I am very grateful to the Chairpersonship for organising this panel discussion on ‘Conflict Resolution within the OSCE’ which gives the members of the Court of Conciliation and Arbitration the opportunity to dialogue with representatives of States parties to the Stockholm Convention, as well as with all OSCE participating States.

Last year, I had the honour to present our annual activity report at the 1260th meeting of the Permanent Council in Vienna on 27 February 2020, which also provided the opportunity for very useful bilateral and multilateral contacts. Since then, the COVID-19 pandemic has hampered our ‘quiet diplomacy’ initiatives, to use a phrase dear to Max van der Stoep, but we have found other avenues of information, communication, and awareness.

This was notably the case with the organisation of a webinar during the publication of the book edited by Christian Tomuschat and Marcelo Kohen, under the title *Flexibility in International Dispute Settlement, Conciliation Revisited* (Brill, 2020). We have also posted a systematic bibliography on the Stockholm Convention that can be useful to researchers and practitioners alike, as well as a collection of background documents to serve as a *Vademecum* for legal scholars.

The annual report reflecting our activities in 2020 was published in early March, and is available on the Court's website. This is not the place though to make a formal presentation. I would like to take advantage of this more flexible and interactive format to discuss, not only the opportunities, but also the challenges we face.

Obviously, the very principle of the peaceful settlement of disputes is too often called into question, as current events give us a dramatic illustration of every day. But as I said, during a hearing organised by the Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe on 24 March, the settlement of disputes takes place over a long time. Arbitration in its modern form was codified by the Hague Conferences of 1899 and 1907, and conciliation appeared soon after, at first in the form of bilateral treaties, before being consecrated as a fully-fledged mode of settlement under Article 33 of the United Nations Charter.

The efforts carried out within the framework of the OSCE were part of this long-term dynamic aimed at pacifying international relations. The Stockholm Convention adopted in 1992

was not just limited to repeating well-known formulas, it entrenched them within the framework of the OSCE, by providing institutional foundations for the Court. It extended the political commitments of the participating States in the form of legal obligations enshrined in one of the rare treaties concluded under the auspices of our organisation. But above all, it has given a practical and concrete - I was going to say pragmatic - content to these commitments, resulting from Principle V of the Decalogue of the Helsinki Final Act.

But we know only too well that in the history of international relations, phases of flow alternate with phases of ebb. Since the beginning of the 21st century, we can only observe a decline in the methods of peaceful solution. Unilateralism too often takes precedence over negotiation, the fait accompli over conciliation, force and cunning over respect for the law. However, the multiplication of tension and conflict does not call into question the value of the principles and commitments of the OSCE. Moreover, the amicable settlement of disputes, with recourse to an impartial third party, is still the best way to preserve a world of cooperation and a spirit of good neighbourliness. It is a first gesture of goodwill, allowing all of the protagonists to save face. It promotes de-escalation and the search for mutually agreed solutions. It makes it possible to limit antagonisms, to reduce, if not to resolve crises, to pave the way for more ambitious diplomatic solutions.

Madam Ambassador,

In this context of geopolitical uncertainty, it is with lucidity and determination that we must make the Stockholm Convention a living instrument at the service of peace. The Vice-President of the Court, Judge Erkki Kourula, will shortly recall the practical arrangements for setting up a conciliation commission and/or an arbitral tribunal, but I would like to stress how important it seems to us that the Court of Conciliation and Arbitration within the OSCE should be an integral part of the 'toolbox' available to participating States, even beyond the circle of States parties to the Convention. We are also very keen to develop contacts with all the OSCE institutions, in particular the Parliamentary Assembly, to give the Court more visibility.

As we approach the 30th anniversary of the adoption of the Stockholm Convention, now is the time to mobilise all of our efforts to create new momentum. It starts with small, very concrete steps.

- Currently, the Convention has 34 States parties, and even though its procedures are open to participating States on an *ad hoc* basis, the ratification of the treaty remains a strong gesture for the States of law which constitute the OSCE. The list of signatures and ratifications speaks for itself. It constitutes a puzzle in which important pieces are missing, given that its vocation is to contribute to the settlement of disputes throughout the OSCE area.

- Similarly, the States parties may make an optional declaration accepting the compulsory jurisdiction of the Court in matters of arbitration, in accordance with Article 26. Here again, this declaration reflects a long-term commitment, facilitating the implementation of procedures.

- Furthermore, all States parties can and must appoint 2 conciliators and 2 arbitrators. Our lists have already been provided, with experts combining diplomatic experience and legal expertise, but these appointments, renewed every six years, constitute both a symbolic support and

an enrichment of the ‘pool of talent’ of our lists, which is particularly important when the Bureau would have to set up a collegial body.

- The last step would of course be to submit a dispute to the Court, allowing it to make its contribution to an amicable solution, in the best interests of the parties involved. The Court must be proactive and responsive, but the imperative of independence and impartiality limits its margin of initiative in the face of potential litigation.

For its part, the Court takes great care to be ready to operate at all times, in order to best meet the expectations of States. This involves evaluations and simulations that the Bureau, which meets regularly, has already undertaken, taking into account the practical, financial, and managerial constraints, the formality and flexibility of the procedures, and the concern for speed and economy of means, as well as the importance of the time factor to promote confidence-building measures and to bring together the theses involved.

We would also like to have a more inclusive approach towards all members of the Court so that they can develop a feeling of belonging and availability, through regular interchanges beyond the current *Newsletter*, for example, by organising annual webinars and expanding our website content. We have thus begun to collect the testimonies of the Convention’s ‘founding fathers’, with videos of President Robert Badinter and Judge Lucius Caflisch.

We must also be a bridge between the past and the future. In this regard, the *Moot Courts* launched by our colleague, Professor Vasilka Sancin, are very useful practical exercises, and will help to awaken the ideal of arbitration and the spirit of conciliation in the new generations.

Madam Ambassador,

I would like to conclude by expressing our gratitude to Sweden, which holds the Chairpersonship, but which is also the Convention’s depositary State, for its initiative in bringing us together today.

I hope that, in an appropriate form, thanks to all the friends of the Convention, we will be able to make the Autumn 2022 meeting a high point in order to reaffirm, together, the central place of dispute settlement within the OSCE. Not only in theory, but also in practice. Not only by speeches, but by deeds.

On behalf of the Court, I thank all participants for their attendance. We look forward to their contribution to this interactive discussion. Thank you for your attention.